IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMM. FOR JUDGMENT NO. 707 OF 2004

IN

SUMM.SUIT NO.1068 of 2003

Godrej & Boyce Mfg.Co Ltd .. Plff

versus

M/s Kikani Mfg Co Ltd & 2 ors .. Defts

Mr N.G.Thakkar, Sr.counsel with Mr K.D.Mehta and Mr A.J.Dhapsekar i.b M/s Payne & Co for Plff in support

None for Defendants

CORAM : D.G. KARNIK, J

DATED : 25th April 2005.

P.C:-

1. Heard learned counsel for the plaintiff. None present for the defendants. This Summons for Judgment is taken out by the plaintiff in a suit filed by it for recovery of the money being the value of the goods sold and supplied to the defendants. By five different purchase orders (copies of which are annexed to the plaint as A-1 to A-5) the defendants placed

orders on the plaintiff for the supply of the goods namely sheets of steel. The plaintiff supplied the said sheets to the defendants and sent its bills/invoices copies of which are annexed to the plaint as Exhibit B-1 to B-13 and Exhibit C-1 to C-10. By a writing dated 20th March, 2001 the defendants agreed that the amount of Rs.55.26 lacs was due and payable by them in respect of the goods supplied for the plaintiff and promised to pay the same in instalments between 30th October, 2001 to 29th February, 2002. The defendants did not pay the said instalments as mentioned in their undertaking but, by a letter dated 6th March, 2002 promised to pay the said amount of Rs.55.26 lacs by instalment between 31st March, 2002 to 31st July, 2002. The defendants failed and neglected to make the payment. The plaintiff has filed this suit for recovery of the money with interest.

2. The plaintiff has filed on record the original documents. The documents are collectively marked Exhibit A. In view of the clear admission by the defendants in their undertaking dated 20th March, 2001 and letter dated 6th March, 2002 there is no dispute about the liability of the defendants to pay the

principal sum of Rs.55.26 lacs. The short question that is required to be decided is whether the defendants are liable to pay the interest.

3. I have perused the copies of the purchase orders filed by the plaintiff. None of the purchase orders specify that the defendants would make the payment on a particular date or that the defendants would be liable to pay interest in the event of their failure to pay the money by a particular date. I have also perused the invoices produced by the plaintiff. Except for one invoice none of the invoices specifies that the defendants would be liable to pay interest in the event the defendants did not make the payment immediately or by a particular date. In the circumstances, there is no contract between the parties to pay interest.

4. Learned counsel for the plaintiff submits that the plaintiff is entitled to the interest under section 61 (2) of the Sale of Goods Act. Sub-section 2 of section 61 of the Sale of Goods Act only specifies that in the absence of any contract to the contrary, the Court may award interest on the amount of the price of the goods. Sub-section (2) of section 61

only confers a power on the Court to award interest, if it thinks fit. No material has been brought on record to show that I should exercise the judicial discretion under sub-section (2) of section 61 for the grant of interest. Neither the purchase orders nor the invoices specify that the defendants would be liable to pay interest. Even though supplies were made as early as in 1999-2000 the defendants did not pay nor offered to pay any interest. When the plaintiff obtained an undertaking from the defendants on 20th March, 2001 that it did not claim any interest but was satisfied with promise of the defendants to pay the principal sum without any interest. In the circumstances, I see no reason to award any interest to the plaintiff prior to the date of institution of the suit, especially when there was no contract to pay interest and even in the undertaking the plaintiff did not insist upon the interest. As regards the interest from the date of the suit, the same can be awarded under section 34 of the Code of Civil Procedure.

Hence, I pass the following order:

" Summons for Judgment is partly made absolute and suit of the plaintiff is decreed as under

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" The defendants shall pay to the plaintiff a sum of Rs.55,26,469/- together with interest on the said sum at 6 % p.a. from the date of the suit till payment and all costs of the suit. "

Issue court fee refund certificate as per rules.

D.G.KARNIK, J